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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re J.C. et al., Persons Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.W. et al.,

Defendants and Appellants.

E058945

(Super.Ct.No. RIJ110388)

OPINION

APPEAL from the Superior Court of Riverside County. Donna L. Crandall,  
Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to  
art. VI, § 6 of the Cal. Const.) Affirmed.

Pamela Rae Tripp, under appointment by the Court of Appeal, for Defendant and  
Appellant J.W.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and  
Appellant J.C.

Pamela J. Walls, County Counsel, Anna M. Marchand, Deputy County Counsel,  
for Plaintiff and Respondent.

No appearance for Minors.

The juvenile court terminated J.C.'s (Father) and J.W.'s (Mother) parental rights to J.C.1, J.C.2, and M.W. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> The juvenile court also denied Father's request to change a court order. (§ 388.) Father raises three issues on appeal. First, Father contends the juvenile court erred by denying his request to change a court order. (§ 388.) Second, Father asserts the issues that led the court to make a finding of unfitness had been resolved by the time the termination hearing was conducted, thus there was no basis for the juvenile court to conduct the termination hearing. Third, Father contends the juvenile court erred by not applying the parent-child bond exception to termination. (§ 366.26, subd. (c)(1)(B)(i).) Mother joins in the three issues raised by Father. In Father's response to this court's request for supplemental briefing, Father asserts he is J.C.1, J.C.2, and M.W.'s presumed father. We affirm the judgments as to Mother and Father.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. BACKGROUND**

J.C.1 and J.C.2 are fraternal twins (the twins); they were born in February 2010. J.C.1 is male. J.C.2 is female. Mother and Father have an “on and off” romantic relationship. M.W. was born during the pendency of the twins' case.

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<sup>1</sup> All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

At the beginning of the twins' case, Mother had a total of nine children. The seven older children had been, or at that time were, dependents of the juvenile court. The primary reason for the detention of the seven older children was Mother's use of amphetamines. At the beginning of the twins' case, Father had a total of three children. The third child is a daughter, J.C.3, by a woman who is not Mother. J.C.3 lived with her mother. Father did not have regular contact with J.C.3. Mother and Father did not live together, and Father was not named on the twins' birth certificates.

B. THE TWINS' DETENTION

In February 2011, Mother was arrested for possession of stolen property. No one was available to care for the twins, so the Department was contacted. Mother's home was described as "unlivable" as well as 'dirty' and 'filthy.'"

Mother identified Father as the twins' father. Mother did not know exactly where Father lived, but believed he was in Moreno Valley. Mother gave the social worker, from the Riverside County Department of Public Social Services (the Department), Father's telephone number. Mother said Father had visited Mother's house the day before her arrest. Mother said Father did not abuse drugs with her.

Father went to the Department's offices to be interviewed. Father told the social worker he lived in Moreno Valley with his girlfriend, L.C. (Girlfriend). Father formerly abused methamphetamines and marijuana, but had been sober for approximately nine months. Father worked two jobs, at a warehouse and a gas station. Father said he was unaware of drugs or weapons in Mother's house, and he was unaware Mother was abusing drugs. While at the Department's offices, Father was arrested due to a bench

warrant in a driving under the influence case. Father was taken to the Moreno Valley Police Station. The children were detained.

The Department filed a petition alleging Mother and Father failed to protect the twins. (§ 300, subd. (b).) Specifically, the Department alleged Mother (1) had an extensive and unresolved history of abusing controlled substances; (2) Mother was arrested, which left the children without a caretaker; (3) Mother neglected the children's health and safety by keeping them in a dirty and cluttered home with an unsecured firearm; (4) Mother failed to benefit from services in the cases with her older children; (5) Mother's parental rights were terminated as to five of her older children; (6) Mother had a criminal history including possession of a controlled substance and a probation violation; (7) Father had a history of abusing controlled substances; (8) Father had a criminal history including possession of a controlled substance and driving under the influence; and (9) Father was arrested, which left the children without a caretaker.

The juvenile court entered a formal detainment order for the twins. The twins were placed in foster care.

#### C. THE TWINS' JURISDICTION AND DISPOSITION

The Department listed Father as being the twins' alleged father. On February 17, 2011, Father told the Department he was the twins' father. In March 2011, Father took a hair follicle drug test as ordered by the juvenile court. Father tested positive for amphetamines and methamphetamines. Father said it had been five months since he last abused drugs. The laboratory said the test covered only a 90-day period. Father missed three of his six visits with the twins.

The Department filed an amended petition. The allegations remained largely the same, but some details were changed. For example, Mother's criminal history was amended to reflect arrests for fictitious checks and being under the influence of a controlled substance, and a probation violation, as opposed to one charge of possessing stolen property. The allegations concerning Father remained the same. The court found all the allegations to be true and sustained the petition. The juvenile court granted Father reunification services, but denied services for Mother.

D. M.W.'S DETENTION, JURISDICTION, AND DISPOSITION

In August 2011, Mother gave birth to her tenth child, M.W., a female. The Department was contacted. Mother said Father was M.W.'s father, although he did not sign the birth certificate and was not present when M.W. was born. Father said he was M.W.'s father. Father explained he was not present when M.W. was born because he was working. Father was listed as M.W.'s alleged father in the Department's petition concerning M.W.

The petition reflected allegations that Mother and Father failed to protect M.W. (§ 300, subd. (b)) and that M.W.'s siblings were abused (§ 300, subd. (j)). Specifically, the Department alleged: (1) Father had an open dependency case related to the twins; (2) Mother failed to reunify with her older children and had an open dependency case concerning the twins; (3) Mother had an extensive and unresolved history of abusing drugs; (4) Father had unresolved drug abuse issues; and (5) M.W.'s nine older siblings have been abused or neglected, thus placing M.W. at risk of abuse or neglect.

The juvenile court found the Department established a prima facie case regarding the allegations pertaining to M.W. The court entered a formal detainment order. M.W. was placed in foster care. At the jurisdiction hearing, the juvenile court found true all the allegations in the petition. The court denied reunification services for Mother, but granted services for Father.

E. THE TWINS' SIX-MONTH REVIEW

Father had been consistently visiting the twins, but began missing appointments due to his work schedule. Father was “working diligently” in a “strict out-patient substance abuse program.” Father made progress and took his recovery seriously. The Department recommended Father be given unsupervised visits, as well as overnight and weekend visits. The court authorized the Department to transition Father to unsupervised and overnight/weekend visits. The court also authorized the Department to transition Father to a plan of family maintenance, if the unsupervised visits went well. The juvenile court told Father, “You are doing very well. Doesn’t look like we’re going to get to a hearing to terminate your parental rights.”

F. THE TWINS' AND M.W.'S REVIEW

The twins were placed together in one foster home, while M.W. resided in a separate foster home. In the Department’s March 2012 report, it indicated the court found Father to be M.W.’s alleged father; however, the Department referred to Father as M.W.’s “presumed father.” The Department gave Father unsupervised visits with the children beginning in November 2011.

In December 2011, Father was in a car accident that “totaled” his car. Father suffered whiplash and minor injuries. As a result of not having transportation, Father lost his job, which in turn caused Father to lose his apartment. Father moved into his aunt’s home. Father also missed visits with the twins and M.W. (collectively “the children”) due to not having transportation. Father completed his reunification services and attended an after-care substance abuse program.

G. M.W.’S REVIEW AND THE TWIN’S 18-MONTH REVIEW

On August 29, 2012, the juvenile court held a combined review hearing for the children’s cases. The court terminated Father’s services in the twins’ and M.W.’s case. The court granted the Department permission to publish information about the termination hearings for purposes of notifying any unknown fathers.

H. TERMINATION AND REQUEST TO CHANGE A COURT ORDER

In June 2013, Father filed a request to change a court order. Father requested the juvenile court change its order (1) terminating his reunification services, and (2) scheduling the termination of parental rights hearing. Father requested the court make orders (1) placing the children with Father on a plan of family maintenance, or (2) provide Father with further reunification services. Father asserted circumstances had changed because (1) Father had tested negative for drugs since July 2012; (2) Father completed the substance abuse aftercare program; (3) Father attended 15 group sessions of a substance abuse treatment program and was responding well to the treatment; (4) Father had housing; and (5) Father had been employed since July 2012. Father contended changing the court’s order would be in the children’s best interests because

they shared a bond with Father. Father asserted he had been consistently visiting the children since January 2013, thus strengthening their bond. The juvenile court ordered a hearing regarding Father's request.

On June 11, 2013, the juvenile court held a combined hearing for terminating parental rights and Father's request to change a court order. As to Father's request, the juvenile court found Father satisfied the changed circumstances prong; however, Father failed to show the requested changes would be in the children's best interests. Therefore, the court denied Father's request to change a court order.

In regard to termination, Father's attorney requested the court apply the parent-child bond exception. Father's attorney asked the court to select a permanent plan of legal guardianship. The Department asserted adoption was the preferred permanent plan. The juvenile court found the parent-child bond exception did not apply and that the children were likely to be adopted. The court terminated Mother's and Father's parental rights to the children and ordered adoption as the children's permanent plans.

## **DISCUSSION**

This court directed Father and the Department to provide supplemental briefing explaining, (1) Father's status in regard to the three children, e.g., alleged, biological, or presumed; and (2) if Father is an alleged father, how does that status affect the issues he has raised on appeal.

We posed this question to Father and the Department because the record is unclear. Throughout the record, Father is referred to as an alleged father, but at a few points he is listed as a presumed father. For example, one page of a Department report



reflects: “[Father] is the presumed father of the child, [M.W.]” However, a following paragraph reflects, “On September 15, 2011, the Court ruled [Father] [i]s the alleged father of the child, [M.W.]” In a subsequent report, Father is listed only as an alleged father.

As a second example, a minute order from the June 11, 2013, hearing refers to Father as a presumed father; however, that status does not appear in the reporter’s transcript—it is only in the minute order. (See *In re P.A.* (2012) 211 Cal.App.4th 23, 30, fn. 4 [conflicting transcripts].) Additionally, when the juvenile court scheduled the hearing to possibly terminate parental rights, the court granted the Department permission to publish information about the termination hearing for purposes of notifying any unknown fathers.

Father’s status in regard to the children is significant because “[o]nly a presumed father, and not a mere biological or alleged father, is entitled to reunification services and custody of a child. [Citation.]” (*In re D.D.* (2006) 144 Cal.App.4th 646, 654.) Thus, if Father is only an alleged or biological father, then the issues he has raised on appeal are moot because the issues concern services and custody; this court could not provide Father his requested relief. (See *In re Albert G.* (2003) 113 Cal.App.4th 132, 134 [an appeal is moot when no relief can be granted].)

The Department asserts a presumed father finding was not made in this case. The Department explains that the references in the record to Father being a presumed father are clerical mistakes. For example, the Department mistakenly referred to Father

as a presumed father, and then the courtroom clerk repeated the error. The Department contends Father is not entitled to services or custody since he is an alleged father.

Father contends the juvenile court made “an express, although indirect, finding” that Father is the children’s presumed father. Father asserts that only a presumed father can be given reunification services, and since Father was given reunification services, the juvenile court implicitly found Father to be a presumed father. Father also asserts the juvenile court, at one point, authorized the children to be placed with Father on a plan of family maintenance, which could only occur with a presumed father. Father asserts the Department did not object in the juvenile court to Father being treated as a presumed father, so Father should continue to be treated as such.

“A man who claims entitlement to presumed father status has the burden of establishing by a preponderance of the evidence the facts supporting his entitlement. [Citation.]” (*In re J.O.* (2009) 178 Cal.App.4th 139, 147.) There are different ways to obtain presumed father status: (1) a man is married to the natural mother when the child is born or within 300 days after (Fam. Code, § 7611, subd. (a)); (2) a man attempted to marry the natural mother prior to the child’s birth, but the marriage is or could be declared invalid (Fam. Code, § 7611, subd. (b)); (3) a man married or attempted to marry the natural mother after the child’s birth and (a) is named on the birth certificate with his consent, or (b) is legally obligated to support the child (Fam. Code, § 7611, subd. (c)); and (4) a man receives the child into his home and openly holds the child out as his natural child (Fam. Code, § 7611, subd. (d)).

Father has not established that he meets any of the foregoing criteria. First, Father never married or attempted to marry Mother. Second, Father is not named on the children's birth certificates. The "father's information" sections on the children's birth certificates are blank. Third, Father did not receive the children into his home. We note Father was authorized to have unsupervised visits with the children in November 2011; however, his car accident occurred the next month, in December 2011, and his visits with the children again became irregular. Due to the irregularity of the visits, assuming the children visited Father's home for the unsupervised visits, those visits would not constitute receiving the children into his home. (See *In re A.A.* (2003) 114 Cal.App.4th 771, 786-787 [visits must be "consistent"].)

Thus, assuming Father is correct that a presumed father finding can be made indirectly, there would be nothing for this court to base that inference upon. We cannot infer the juvenile court made a finding when nothing in the record supports such a finding. Rather, it appears from the record that the juvenile court, lawyers, and parties simply forgot about the finding and did not notice the inconsistencies in the paperwork. Since nobody addressed the presumed father issue at the juvenile court, we conclude Father is an alleged father. We conclude the record reflects Father is an alleged father, rather than a biological father, because (1) the record does not include a paternity test, and (2) Mother has other children by different men, and there is nothing in the record eliminating the possibility that another man is the children's biological father. (See *In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15 ["A biological or natural father is one

whose biological paternity has been established, but who has not achieved presumed father status”].)

Accordingly, since the record reflects Father is an alleged father, we conclude the remaining issues on appeal are moot. This court cannot grant Father the relief he seeks in the remaining issues because he is an alleged father, and therefore is not entitled to services or custody of the children. (See *In re Albert G.*, *supra*, 113 Cal.App.4th at p. 134 [an appeal is moot when no relief can be granted].)

Mother joined in Father’s appellant’s opening brief. Mother did not raise any independent arguments in relation to her case. For example, the juvenile court denied Mother reunification services as to all three children, i.e., she did not receive services. Therefore, Father’s arguments concerning continued services do not appear relevant to Mother’s situation. Further, Mother does not explain how Father’s arguments concerning the parent-child bond exception would apply to her case or how Father’s argument concerning resolving the issues raised in the petitions would apply to her case. Therefore, since Mother has not provided any independent argument in relation to the specifics of her case, we find any error waived as to Mother. (*In re Marriage of Falcone* (2008) 164 Cal.App.4th 814, 830 [absence of legal argument allows the appellate court to treat the issue as waived]; *People v. Jacobs* (2013) 220 Cal.App.4th 67, 77 [same].)

## DISPOSITION

The judgments as to Mother and Father are affirmed.

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MILLER  
J.

We concur:

RAMIREZ  
P. J.

CODRINGTON  
J.